

No. 13-0052 RA

We held a hearing on July 12, 2013. The petitioner was represented by Assistant Attorney General Ross A. Brown. Mr. Akin appeared on his own behalf. The petitioner's evidence included exhibits, and the testimony of Vanessa Beauchamp, its Executive Director, and Randall Bryson, who is an expert in the field of real estate appraisal, and has extensive experience with real estate appraisals in the central Missouri region.

Mr. Akin objected to none of the exhibits or testimony, and candidly acknowledged that his appraisal reports contained errors.<sup>1</sup> He simply denied that his omissions or commissions were intentional.<sup>2</sup> Accordingly, almost all of the evidence was undisputed.

The matter became ready on November 18, 2013, when briefing concluded.

### **Findings of Fact**

1. The Missouri Real Estate Appraisers Commission (MREAC) was established under § 339.507, RSMo,<sup>3</sup> for the purpose of executing and enforcing the provisions of §§ 339.500 through 339.549, RSMo.

2. David S. Akin is certified by the MREAC as a residential real estate appraiser. His license was current and active at all relevant times.

3. As a residential real estate appraiser, Mr. Akin was required during the time relevant to this case, to develop and report his appraisals in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), 2010 – 2011 Edition.

#### Count I—5805 Vero Way Appraisal Report

4. Mr. Akin prepared and signed a Uniform Residential Appraisal Report for residential real estate located at 5805 Vero Way, Columbia, Missouri 65201 (“the 5805 Vero Way Appraisal Report”), valuing the property at \$138,000. The effective date of the report was March 30, 2011.

5. The 5805 Vero Way Appraisal Report was prepared for Custom Mortgage Solutions, Inc., a Missouri corporation.

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<sup>1</sup> Tr. 95.

<sup>2</sup> *Id.*

<sup>3</sup> References to “RSMo” are to the Revised Statutes of Missouri (Supp. 2012), unless otherwise noted.

6. In preparing and reporting the 5805 Vero Way Appraisal Report, Mr. Akin made significant and substantial errors of omission or commission, or both, including the following:

A. In the Sales Comparison Approach section, he failed to adjust comparable sale #4 for being a custom built home or address its quality and finish upgrades, and stated that comparable sale #5 was one year old when the MLS<sup>4</sup> revealed it was still under construction.

B. He omitted any support for his conclusion that the effective age of the property was 2 years rather than its actual age of 6 years, and inconsistently identified the improvements on the property.

C. In the Site Section, he provided inaccurate information for the Federal Emergency Management Agency (FEMA) Flood Map zone, map number and map date.

D. In the Subject section, he incorrectly stated the listing history and status of the property by stating it was listed since June 29, 2010 at \$145,000. In fact, it was listed for \$150,000 on June 29, 2010 and after numerous reductions was listed for \$139,000 at the time of the 5805 Vero Way Appraisal Report.

E. The summary information provided at the top of page 2 of 6 of the 5805 Vero Way Appraisal Report for comparable sales and listings is inconsistent with the same information provided in the Market Condition addendum.

7. In the preparation of the Sales Comparison Analysis section of the 5805 Vero Way Appraisal Report, Mr. Akin made significant and substantial errors of omission and commission, including the following:

A. He inaccurately adjusted the Sales Comparison Approach by failing to accurately adjust the value of comparable sale # 1 and using the wrong sale price on comparable sale # 2.

B. He failed to analyze such comparable sales data as was available by failing to account for quality and finish upgrades in comparable sale # 3, to account for numerous upgrades and the custom-built nature of comparable sale # 4, and to account for

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<sup>4</sup> MLS stands for Multiple Listing Service. The system compiles comprehensive information about homes listed for sale by realtors.

recent renovations in comparable sale # 1, all of which were available in the MLS system.

8. The 5805 Vero Way Appraisal Report does not offer a reliable appraisal of the property's value and is not credible, and could mislead users.

Count II—805 Wilkes Boulevard Appraisal Report

9. Mr. Akin prepared and signed a Uniform Residential Appraisal Report for residential real estate located at 805 Wilkes Boulevard, Columbia, Missouri 65201 ("805 Wilkes Boulevard Appraisal Report"), valuing the property at \$90,000. The effective date of the report was March 21, 2011.

10. The 805 Wilkes Boulevard Appraisal Report was prepared for Urban Financial Group, Inc., a Missouri corporation.

11. In preparing and reporting the 805 Wilkes Boulevard Appraisal Report, Mr. Akin made significant and substantial errors of omission and commission, including failing to accurately and clearly set out the appraisal in a manner that was not misleading, and failing to properly support the adjustments he made to reduce the effective age of the property to 8 years when its actual age was 17 years.

12. In the preparation of the Sales Comparison Analysis section of the 805 Wilkes Boulevard Appraisal Report, Mr. Akin made significant and substantial errors of omission and commission, including the following:

A. He incorrectly reported the specific zoning classification as "R-1 Single Family Residential" and zoning description as "Residential Typical," when the property was zone "R-3" and the description was "Medium Density, Multiple Family Dwelling."

B. He rendered the appraisal in a careless manner by failing to have the sale and listing totals match in all areas of the report, which in aggregate affects the credibility of the results of the report.

13. In the preparation of the Cost Approach section of the 805 Wilkes Boulevard Appraisal Report, Mr. Akin made significant and substantial errors of omission and commission, including the following:

He did not correctly employ recognized methods and techniques necessary to produce a credible appraisal because he failed to include any support for the site value in the Cost Approach.

14. The 805 Wilkes Boulevard Appraisal Report value reported is not reliable or credible, and could mislead users.

Count III—2600-2602 Face Rock Court Appraisal Report

15. Mr. Akin prepared and signed a Uniformed Residential Appraisal Report for residential real estate located at 2600-2602 Face Rock Court, Columbia, Missouri, 65203-5751 (the “2600-2602 Face Rock Court Appraisal Report”), valuing the property at \$586,650. The effective date of the appraisal report was February 8, 2011.

16. The 2600-2602 Face Rock Court Appraisal Report was prepared for Mortgage Solutions of Colorado, LLC, a foreign corporation registered in Missouri.

17. In preparing and reporting the 2600-2602 Face Rock Court Appraisal Report, Mr. Akin made significant and substantial errors of omission and commission, including the following:

A. He failed to correctly develop an opinion of the highest and best use of the real estate by not taking into consideration the highly unusual nature of the subject property’s improvements which are engineered to become condominium units if desired.

B. He failed to properly develop an opinion of site value by an appropriate appraisal method or technique because he did not have support for the site value.

C. He failed to clearly and accurately set forth the appraisal in a manner that was not misleading by failing to support forecasted

rents with rental comparables.

D. He failed to correctly state whether the owner or tenant paid for the utilities.

E. He failed to correctly note the specific zoning classification as “R-2” and “Two Family Development,” not “R-3” and “Multi-Family Residential” as he reported.

18. In the preparation of the Sales Comparison Analysis section of the 2600-2602 Face Rock Court Appraisal Report, Mr. Akin made significant and substantial errors of omission or commission, or both, including the following:

He failed to explain his reasoning or to show support for the final market value opinion of the property at \$568,560 when the Cost Approach value was \$421,153.

19. In the preparation of the Income Approach section of the 2600-2602 Face Rock Court Appraisal Report, Mr. Akin made significant and substantial errors of omission or commission, or both, including the following:

A. He failed to correctly analyze and support such comparable rental data as were available and the potential earning capacity of the property. In estimating the gross income potential of the property, he reported comparable rentals as earning \$1,700, \$1,800, and \$2,200 per unit, and then stated that the subject property had a rental value of \$2,400, without explaining adjustments.

B. Further, the analysis of the rental data does not support the estimated rent for the subject property at \$2,400 per unit, since the rents noted immediately above do not support this conclusion. Likewise, Mr. Akin failed to provide support for the Gross Rent Multiplier which was used in the analysis.

20. The 2600-2602 Face Rock Court Appraisal Report is not credible, could mislead users, and the value cannot be relied upon.

## Conclusions of Law

We have jurisdiction. § 621.045, RSMo.

The MREAC has the burden to prove facts for which the law allows discipline, *Mo. Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989), and must do so by a preponderance of the evidence, *State Bd. of Nursing v. Berry*, 32 S.W.3d 638, 642 (Mo. App. W.D. 2000). A preponderance of the evidence is that which is of greater weight or more convincing than that offered in opposition to it, or that which as a whole shows the fact to be proved to be more probable than not. *Berry*, 32 S.W.3d at 642.

Here, the MREAC alleges that cause exists to discipline Mr. Akin's residential real estate appraiser license under seven subsections of § 339.532.2, RSMo:

The commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any state-certified real estate appraiser, state-licensed real estate appraiser, state-licensed appraiser trainee, state-certified residential appraiser trainee, state-certified general appraiser trainee, state-licensed appraisal management company that is a legal entity other than a natural person, any person who is a controlling person as defined in this chapter, or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

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(5) Incompetency, misconduct, gross negligence, dishonesty, fraud, or misrepresentation in the performance of the functions or duties of any profession licensed or regulated by sections 339.500 to 339.549;

(6) Violation of any of the standards for the development or communication of real estate appraisals as provided in or pursuant to sections 339.500 to 339.549;

(7) Failure to comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation;

(8) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal;

(9) Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;

(10) Violating, assisting or enabling any person to willfully disregard any of the provisions of sections 339.500 to 339.549 or the regulations of the commission for the administration and enforcement of the provisions of sections 339.500 to 339.549; [and]

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(14) Violation of any professional trust or confidence[.]

We note that subsections (6), (7) and (10) of subsections of § 339.532.2 generally address the professional standards that apply to real estate appraisers. With regard to such standards, the MREAC also points to § 339.535, RSMo, which provides:

State-certified real estate appraisers, state-licensed real estate appraisers, state-licensed appraiser trainees, and state-certified appraiser trainees shall comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation.

The Uniform Standards of Professional Appraisal Practice (“USPAP”), 2010-2011, are relevant to this case.<sup>5</sup> The MREAC alleges violations of numerous specific USPAP standards, as follows:

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<sup>5</sup> The USPAP contains general standards and related standards rules, abbreviated therein as “SR,” and ethics standards. In the instant decision, we use the words “standard” and “rule” and the “SR” abbreviation to refer to the USPAP standards and standards rules throughout this decision.



Standard 1:

In developing a real property appraisal, an appraiser must identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal.

SR-1-1(a), (b) and (c):

In developing a real property appraisal, an appraiser must:

- (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;
- (b) not commit a substantial error of omission or commission that significantly affects an appraisal; and
- (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.

SR 1-4(a), (b), (b)(i) and (iii), and (c):

In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.

- (a) When sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.
- (b) When a cost approach is necessary for credible assignment results, an appraiser must:
  - (i) develop an opinion of site value by an appropriate appraisal method or technique; [and]...
  - (iii) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation).
- (c) When an income approach is necessary for credible assignment results, an appraiser must:

- (i) analyze such comparable rental data as are available and/or the potential earnings capacity of the property to estimate the gross income potential of the property[.]

SR 1-5(a):

When the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business:

- (a) analyze all agreements of sale, options, and listings of the subject property current as of the effective date of the appraisal[.]

Standard 2:

In reporting the results of a real property appraisal, an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

SR 2-1(a) and (b):

Each written or oral real property appraisal report must:

- (a) clearly and accurately set forth the appraisal in a manner that will not be misleading;
- (b) contain sufficient information to enable the intended users of the appraisal to understand the report properly[.]

SR 2-2(b)(viii):

The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

- (viii) summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained [.]

Ethics Rule:

An appraiser must comply with USPAP when obligated by law or regulation....

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*Conduct:*

An appraiser:

- must not communicate assignment results with intent to mislead or to defraud;
- must not use or communicate a report that is known by the appraiser to be misleading or fraudulent;
- must not knowingly permit an employee or other person to communicate a misleading or fraudulent report[.<sup>6</sup>]

As specifically addressed below, we conclude cause for discipline exists under all seven subsections of § 339.532.2, in whole or in part, to which the MREAC points. We will address the seven subsections out of order. Subsections (6), (7) and (10)—dealing with the USPAP violations—are dealt with last.

**I. Section 339.532.2(5)**

Subsection 5 provides cause for discipline in the case of incompetency, misconduct, gross negligence, or misrepresentation, among other things, in the performance of a licensee’s duties. We conclude the MREAC has established gross negligence, misrepresentation, and incompetency by a preponderance of the evidence, but not misconduct.

**A. Gross negligence, misrepresentation, and incompetency established**

In the context of professional licensure, Missouri courts have defined gross negligence as “an act or course of conduct which demonstrates a conscious indifference to a professional duty[.]” *Duncan v. Mo. Bd. for Architects, Prof’l Eng’rs and Land Surveyors*, 744 S.W.2d 524,

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<sup>6</sup> We cite the version of the USPAP Ethics Rule—Conduct appearing in the 2010-2011 USPAP guidebook, relevant herein and admitted into evidence as the MREAC’s Exhibit F. The version we cite does not contain reference to competency. We note that in its Complaint, p. 8, and Proposed Findings of Fact, Conclusions of Law and Argument, pp. 19 and 28, the MREAC apparently cites a different version of the Ethics Rule—Conduct, one that does reference competency. Because the relevant version of the Ethics Rule does not contain it, we make no conclusion regarding a violation of the rule based on competency. The version of the rule cited by the MREAC otherwise matches the 2010-2011 version in substance.

533 and n.6 (Mo. App. E.D. 1988). Such indifference constitutes “a gross deviation from the standard of care which a reasonable person would exercise in the situation.” *Id.*

We note that the MREAC’s expert, Mr. Bryson, testified regarding the duties of a professional real estate appraiser like Mr. Akin. Mr. Bryson explained that Mr. Akin failed in his duty because all three appraisals were unreliable, not credible, and could mislead users, in violation of professional standards.

The record amply supports Mr. Bryson’s opinion. Mr. Akin’s errors show he grossly deviated from the standard of care owed, and we conclude he was consciously indifferent to that duty, inasmuch as his errors were obvious ones and could have been avoided with relatively little effort. For example, he failed to demonstrate support for his conclusions; failed to use readily available data from a source and of a type commonly relied upon by members of his profession; misstated zoning classifications; and failed to consistently state data from section to section of a report. We conclude Mr. Akin was grossly negligent in preparing and reporting the three appraisals.

To make a “misrepresentation” is to make an “untrue, incorrect or misleading representation.” WEBSTER’S THIRD NEW INT’L DICTIONARY UNABRIDGED 1445 (1986). The foregoing discussion at minimum demonstrates Mr. Akin made incorrect and misleading representations in the three appraisal reports. He therefore made misrepresentations.

“Incompetency” is a general lack of professional ability, or a lack of disposition to use an otherwise sufficient professional ability. *Albanna v. State Bd. of Regis. for Healing Arts*, 293 S.W.3d 423, 435 (Mo. banc 2009). Incompetency is not necessarily established by a negligent act, or even a series of negligent acts, but by demonstration that the professional is unable or

unwilling to function properly. *Id.* at 436 (citing *Tendai v. State Bd. of Regis. for Healing Arts*, 161 S.W.3d 358, 369 (Mo. banc 2005)).

The MREAC established incompetency by a preponderance of the evidence. Mr. Akin committed a series of negligent acts in February and March 2011. As noted in connection with our discussion of gross negligence, Mr. Akin's errors were obvious ones and could have been avoided with relatively little effort. We have no reason, based on the totality of the evidence, to believe that Mr. Akin lacks sufficient professional ability. But with respect to the three appraisal reports prepared over two months at issue here, he was at minimum unable to function properly.

#### **B. Misconduct not established**

As for misconduct, in the context of professional licensure and discipline, Missouri courts have defined it as "the willful doing of an act with a wrongful intention." *See Duncan v. Mo. Bd. for Architects, Professional Engineers and Land Surveyors*, 744 S.W.2d 524, 541 (Mo. App. E.D. 1988).

Mr. Akin testified briefly on his own behalf at the hearing in this case and candidly admitted that he made errors in the appraisals, but denied that his omissions or commissions were intentional.<sup>7</sup> The MREAC did not cross examine Mr. Akin and offered no direct evidence of his intent. We found Mr. Akin credible. Moreover, the MREAC's expert did not opine as to whether the types of errors Mr. Akin made in the three appraisals are considered hallmarks or otherwise demonstrative of fraud in the profession and if so, why. Having considered the evidence, we do not find or conclude that Mr. Akin willfully committed wrongful acts, or acted with the intent or purpose to deceive. Accordingly, we reject misconduct as a basis for discipline.

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<sup>7</sup>

Tr. 95.

Cause to discipline Mr. Akin's real estate appraiser certification exists under § 339.532.2(5) based on gross negligence, misrepresentation, and incompetency, but not misconduct.

**II. Section 339.532.2(8)**

Subsection (8) provides cause for discipline for a licensee's failure or refusal, without good cause, to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communicating an appraisal.

We conclude the MREAC has established Mr. Akin's failure or refusal to exercise reasonable diligence. We make our conclusion based on the many errors discussed in connection with violation of subsection (5) in the preceding section.

Cause exists to discipline Mr. Akin under § 339.532.2(8).

**III. Section 339.532.2(9)**

Subsection (9) provides cause for discipline when a licensee displays negligence or incompetence in developing an appraisal, or preparing or communicating an appraisal report.

Similar to our discussion of subsection (5), the significant number of errors made in the three reports demonstrates negligence and incompetence in developing an appraisal, in preparing an appraisal report, and in communicating an appraisal, therefore providing cause for discipline under § 339.532.2(9).

**IV. Section 339.532.2(14)**

For purposes of discipline under subsection (14), Mr. Akin violated the professional trust and confidence he owed to his clients, the intended users of the appraisal report, and the public.

"Professional" is

of, relating to, or characteristic of a profession or calling...[;]...  
engaged in one of the learned professions or in an occupation

requiring a high level of training and proficiency...[; and]...characterized or conforming to the technical or ethical standards of a profession or an occupation....

WEBSTER'S THIRD NEW INT'L DICTIONARY UNABRIDGED 1811 (1986). "Trust" is "assured reliance on some person or thing [;] a confident dependence on the character, ability, strength, or truth of someone or something...[.]" *Id.* at 2456. "Confidence" is a synonym for "trust." *Id.* at 475 and 2456. Trust "implies an assured attitude toward another which may rest on blended evidence of experience and more subjective grounds such as knowledge, affection, admiration, respect, or reverence[.]" *Id.* at 2456. Confidence "may indicate a feeling of sureness about another that is based on experience and evidence without strong effect of the subjective[.]" *Id.* In short, professional trust or confidence is the reliance on the special knowledge and skills evidenced by professional licensure.

For the same reasons discussed above in connection with violation of subsections (5), (8) and (9), we conclude Mr. Akin neglected to use the specialized knowledge and skills that he has as an appraiser to prepare reliable and credible appraisal reports, upon which the intended users and the public could rely. The reports he prepared in fact could mislead users, including the companies for which he specifically prepared them.

Therefore, cause exists to discipline his license under § 339.532.2(14).

**V. Section 339.532.2(6), (7) and (10)**

Subsections (6), (7), and (10) are somewhat redundant of each other, but generally require a licensee to follow professional standards. Section 339.535 specifies that those professional standards are the USPAP standards for real estate appraisers such as Mr. Akin.

Mr. Akin's conduct in the preparation of the three appraisal reports violates every USPAP standard, in whole or in part as specified, to which the MREAC points, and cause for discipline therefore exists under § 339.532.2(6), (7), and (10).

We address each alleged USPAP violation in detail below, as relevant to each of the three reports.

A. Count I – 5805 Vero Way Appraisal Report

With respect to the 5805 Vero Way Appraisal Report, Mr. Akin violated USPAP Standard 1; USPAP SR 1-1(a)—(c), 1-4(a), and 1-5(a); USPAP Standard 2; USPAP SR 2-1(a)—(b); and USPAP Ethics Rule—Conduct. Specifically:

- USPAP Standard 1

Mr. Akin's preparation and reporting of the 5805 Vero Way Report violated USPAP Standard 1, regarding the development of appraisals, because he did not “identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal.”

USPAP Standard 1 is a broad and general standard. The multiple errors Mr. Akin made in the 5805 Vero Way Appraisal Report, such as stating the wrong FEMA Flood Zone map information, not noting all elements of comparable sales, and failing to include support or analysis for adjustments and decisions he made in preparing the report, result in the failure to correctly complete the research and analysis necessary to produce a credible appraisal.

Mr. Akin's violation USPAP Standard 1 in his preparation of the 5805 Vero Way Report is more specifically demonstrated in the context of his various USPAP Standards Rules violations, addressed in turn below.



- USPAP SR 1-1(a)

Under SR 1-1(a), Mr. Akin was required to be aware of, understand and correctly employ the recognized methods and techniques necessary to produce a credible appraisal. He did not.

Mr. Akin failed to correctly employ the recognized methods and techniques for the Sales Comparison Approach, particularly in regard to adjusting comparables to reflect upgrades in quality and nature, and in the use of effective age, when he failed to provide the necessary analysis for its application. First, within the Sales Comparison Approach, Mr. Akin failed make an adjustment for comparable sale number 4. Mr. Akin did not note that the house was custom built and possessed numerous upgrades. Instead, he presented comparable sale number 4 as just an average house.

Second, Mr. Akin failed to provide a discussion or analysis of comparable sale number 5, which in the report was listed as one year old, when in reality, the comparable sale was under construction. This misrepresentation of the age of the house is misleading without a discussion of the analysis behind that decision.

Third, Mr. Akin failed to correctly employ the standard of effective age versus actual age, when he lowered the age of the property, but did not offer support for doing so.

Finally, Mr. Akin failed to consistently report the number of comparable properties available for review.

Therefore, the 5805 Vero Way Report was not credible and Mr. Akin violated USPAP Standard 1 and USPAP SR 1-1(a).

- USPAP SR 1-1(b)

Under SR 1-1(b), Mr. Akin was required not to commit substantial errors of omission and commission that significantly affected the 5805 Vero Way Appraisal Report.

As discussed above, Mr. Akin omitted necessary discussion and analysis of his adjustments to comparable sales in the Sales Comparison Approach section, discussion of how he rationalized the effective age of the property, and a complete sales history of the property. Additionally, Mr. Akin committed a substantial error when he failed to report the correct sales price for comparable sale number 2, which significantly affected the credibility of the value estimate of the property within the Sales Comparison Approach.

The 5805 Vero Way Appraisal Report was affected by substantial errors of omission and commission. Mr. Akin violated USPAP Standard 1 and USPAP SR 1-1(b).

- USPAP SR 1-1(c)

Under SR 1-1(c), appraisal services must not be rendered in a negligent or careless manner. Standard Rule 1-1(c) further provides that even if individual errors might not significantly affect credibility of appraisal results, a series of errors may, in the aggregate, which must be avoided.

Mr. Akin stated the wrong FEMA Flood Zone map information for the subject property. He stated the wrong price for comparison sale number 2 and incorrectly stated the condition of comparable sale number 1. In regard to comparable sale number 1, he stated that the property had 3 bedrooms when it actually had 4. The MLS listing identified as the source of his information for the comparable sale provided that the comparable sale had multiple upgrades, which Mr. Akin did not mention in his report and which would have been information easily attained.

Similarly, Mr. Akin ignored, or did not include in his report, information that comparable sale number 4 was custom built and had upgrades. That information that was readily available through the MLS system.

While some of these errors may not alone affect the credibility of the report, in the aggregate, they do affect the credibility of the report and reveal Mr. Akin's carelessness and negligence in preparing it. The errors affected credibility of the report.

Mr. Akin violated USPAP Standard 1 and USPAP SR 1-1(c).

- USPAP SR 1-4(a)

Mr. Akin violated SR 1-4(a) when he did not collect, verify and analyze all information applicable to the appraisal, and when, in the context of applying the sales comparison approach, he did not analyze available, comparable sales data "to indicate a value conclusion."

Specifically, Mr. Akin failed to correctly apply the Sales Comparison Approach when he failed to include analysis and explanation for the comparable sales he selected and how he adjusted them, if he made adjustments at all. On multiple occasions, he failed to properly analyze such factors as upgrades and quality of construction in his comparable sales. Thus, he failed to analyze the comparable sales data that was available and his value conclusion is not credible.

Therefore, Mr. Akin violated USPAP Standard 1 and USPAP SR 1-4(a).

- USPAP SR 1-5(a).

Mr. Akin violated USPAP Standard 1 and SR 1-5(a), which applies to generation of market value, because he failed to accurately state the listing history of the subject property, and failed to analyze all relevant agreements of sale, options, or listings of the property.

Specifically, Mr. Akin in his statement of the subject property's listing history failed to include all history, noted by the absence of one of its earlier listings on June 29, 2010 for \$150,000, reduced on July 15, 2010 to \$148,000 and yet again on August, 24 2010 to \$145,000.

Mr. Akin's report stated the price began at \$145,000 rather than revealing it was twice reduced before it reached that figure.

As a result, Mr. Akin failed to provide an adequate analysis of the current listing of the subject property, a violation of USPAP Standard 1 and USPAP SR 1-5(a).

- USPAP Standard 2

Mr. Akin's preparation of the 5805 Vero Way Appraisal Report violated USPAP Standard 2, regarding the reporting of the results of an appraisal, when he failed to communicate his "analysis, opinion, and conclusion in a manner that [was] not misleading."

USPAP Standard 2 is a broad and general standard. Mr. Akin violated it when he failed to communicate any analysis on multiple occasions in the 5805 Vero Way Appraisal Report, such as why he changed the subject property's effective age, or why he adjusted or failed to adjust sales comparisons for certain property characteristics. The failure to communicate these details, as well as others like the price and sales history of the subject property, resulted in a misleading report.

Mr. Akin's violation of USPAP Standard 2 in his preparation of the 5805 Vero Way Appraisal Report is more specifically demonstrated in the context of his various USPAP Standard Rule violations, addressed in turn below.

- USPAP SR 2-1(a)

Based on Mr. Akin's misrepresentations, failure to include discussions and analyses, and multiple inaccuracies concerning comparable sales, he violated SR 2-1(a), which requires reports to be clearly and accurately stated so as not to be misleading.

The 5805 Vero Way Appraisal Report misleads a user of the report because the report does not accurately state the conditions of the subject property and the comparable sales; fails to

offer discussions of or analyses for adjustments, or the lack thereof, for those comparable sales; and contains other errors such as the incorrect FEMA Flood Zone map designation.

Therefore, Mr. Akin violated USPAP Standard 2 and USPAP SR 2-1(a).

- USPAP SR 2-1(b)

Based on Mr. Akin's careless and negligent errors and omissions, he violated SR 2-1(b), which requires a report to contain sufficient information to permit the intended user to understand it properly.

For example, a user of the report is not provided enough information to understand why Mr. Akin adjusted the effective age of the subject property to 2 years from 6 years, or why he chose not to account for upgrades or the nature of construction of comparable sales.

Mr. Akin therefore violated USPAP Standard 2 and USPAP SR 2-1(b).

- Ethics Rule—Conduct

Mr. Akin communicated the results of the 5805 Vero Way Report in a misleading manner, in violation of the USPAP Ethics Rule regarding Conduct. We do not find that he did so knowing the report to be fraudulent.

To “mislead” means to “lead in a wrong direction or into a mistaken action or belief[.]” WEBSTER’S THIRD NEW INT’L DICTIONARY UNABRIDGED 1444 (1986). The dictionary entry for mislead does not explicitly address intent. But the entry does note that a synonym of mislead is “deceive.” *Id.*

To deceive is to “cheat” or “defraud,” or “to cause to believe the false,” as in, to “delude.” *Id.* at 584. The dictionary entry for deceive lists “mislead” as a synonym, and explains that to mislead “indicates a causing to fall into error of some sort, intentionally or not[.]” *Id.* (emphasis added).

In other words, while the definition of “deceive” plainly includes bad intent, the definition of “mislead” does not plainly include it. And notwithstanding the dictionary entries indicating that the two words are synonyms, the explanatory material accompanying “deceive” suggests that to mislead may or may not include bad intent. If the issue before us were the Ethics Rule’s use of the word “deceiving,” rather than “misleading,” we may have been inclined to find against the MREAC and in favor of Mr. Akin in regard to violation of the rule, because we do not believe Mr. Akin acted with bad intent. But the rule uses the word “misleading,” and we therefore conclude the MREAC need not prove Mr. Akin had bad intent to prove that he prepared misleading reports.

And we do conclude Mr. Akin’s 5805 Vero Way Appraisal Report was misleading, in view of the numerous errors it contained—lack of analysis, misstatement of comparable sales prices, and others, as discussed above. Such errors could lead a user in a wrong direction, or into a mistaken action or belief.

The other portion of the Ethics Rule to which the MREAC points is violation based on “fraud.” Fraud means an act of “trickery” or “deceit.” *Id.* at 904. We do not find that Mr. Akin committed an act of trickery or deceit in preparing the 5805 Vero Way Appraisal Report.

Mr. Akin violated the USPAP Ethics Rule regarding Conduct in preparing the 5805 Vero Way Appraisal Report, because the report he prepared was misleading. But the report was not fraudulent.

#### B. Count II – 805 Wilkes Boulevard Appraisal Report

In preparing and reporting the 805 Wilkes Boulevard Appraisal Report, Mr. Akin violated USPAP Standard 1 and USPAP SR 1-1(a) and (c), 2-4(b), 2-1(a)—(b), and 2-2(b)(viii). Specifically:

- USPAP Standard 1

Mr. Akin's preparation and reporting of the 805 Wilkes Boulevard Appraisal Report violated USPAP Standard 1, regarding the development of appraisals, because he did not "identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal."

As noted above, USPAP Standard 1 is a broad and general standard. The multiple careless and negligent errors Mr. Akin made in the 805 Wilkes Boulevard Appraisal Report, such as misstating the zoning classification, inconsistently stating information about comparable sales throughout the report, offering no explanation of how he arrived at the site value for the subject property, and failure to describe the information he analyzed and his reasoning, result in the failure to correctly complete the research and analysis necessary to produce a credible appraisal.

Mr. Akin's violation of USPAP Standard 1 in his preparation of the 805 Wilkes Boulevard Appraisal Report is more specifically demonstrated in the context of his various USPAP Standard Rule violations, addressed in turn below.

- USPAP SR 1-1(a)

Mr. Akin failed to correctly use recognized methods and techniques in preparation of the 805 Wilkes Boulevard Appraisal Report that were necessary to a credible appraisal. He failed to accurately apply the Sales Comparison Approach by misstating the zoning classification of the subject property and failed to ensure that totals listed for comparable sales and listings available for review were consistent throughout the report. He also failed in the Cost Approach section to offer any support for the site value of the subject property, a critical component of the approach, according to the MREAC's expert.

Mr. Akin violated USPAP Standard 1 and SR 1-1(a).

- USPAP SR 1-1(c)

Mr. Akin rendered the 805 Wilkes Boulevard Appraisal Report in a careless and negligent manner, by making several errors and misrepresentations that in the aggregate affected the credibility of the report. For example, Mr. Akin stated the wrong zoning classification for the property as R-1, single-family, when it was R-3, multiple family, information that was public and easily accessible to him.

Mr. Akin also did not consistently state the number of comparable sales and listings throughout the report, which affected the credibility, because the subject property's value is measured in relation to comparable sales in the surrounding area. The number of those sales and listings affects the importance that should be given to the comparable sales applied.

Mr. Akin was violated USPAP Standard 1 and SR 1-1(c).

- USPAP SR 1-4(b)

Based on Mr. Akin's errors and omissions in the preparation of the Cost Approach section, he violated USPAP Standard 1 and SR 1-4(b), which requires an appraiser to collect, verify and analyze all applicable information, and when using the cost approach, use an appropriate appraisal method to develop the site value.

Mr. Akin failed to develop the site value using an appropriate appraisal method, because he offered no explanation of how he arrived at the value of the site for the subject property.

Therefore, Mr. Akin violated USPAP Standard 1 and SR 1-4(b).

- USPAP Standard 2

Mr. Akin's preparation of the 805 Wilkes Boulevard Appraisal Report violated USPAP Standard 2, regarding the reporting of the results of an appraisal, when he failed to communicate his "analysis, opinion, and conclusion in a manner that [was] not misleading."



As noted above, USPAP Standard 2 is a broad and general standard. Mr. Akin violated it when he failed to demonstrate the method he used determining the age of the subject property or how he established the site value, misstated the zoning classification, inconsistently stated information from section to section of the report, and otherwise failed to summarize the information analyzed, the appraisal methods and techniques used, and the reasoning that supports the analyses, opinions and conclusions, resulting in a misleading report.

Mr. Akin's violation of USPAP Standard 2 in his preparation of the 805 Wilkes Boulevard Appraisal Report is more specifically demonstrated in the context of his various USPAP Standard Rule violations, addressed in turn below.

- USPAP SR 2-1(a) and (b)

Under USPAP SR 2-1(a), Mr. Akin had an obligation to set forth the appraisal clearly and accurately, and in a manner that would not be misleading. The errors discussed above show that the 805 Wilkes Boulevard Appraisal Report was not so set forth. The report does not demonstrate what method Mr. Akin used to give the subject property an effective age of 8 years rather than its actual age of 17 years, or how he established the site value of the subject property. Likewise, he did not accurately set out the correct zoning classification for the house, or a consistent number of listings and comparable sales.

Under USPAP SR 2-1(b), Mr. Akin had an obligation to provide sufficient information in the report to allow the intended users to understand it. Again, based on the errors discussed above, Mr. Akin failed to include sufficient information to make the 805 Wilkes Boulevard Appraisal Report understandable to its intended users.

Therefore, Mr. Akin violated USPAP Standard 2 and SR 2-1(a) and (b).

- USPAP SR 2-2(b)(viii)

Under USPAP SR 2-2(b)(viii), a summary appraisal report must at minimum summarize the information analyzed, the appraisal methods and techniques used, and the reasoning that supports the analyses, opinions and conclusions.

Based on Mr. Akin's failure to summarize the information analyzed, or the reasoning that supported his analyses, opinions and conclusions, such as the site value for the subject property and the reduction of the subject property's effective age to 8 years from its actual age of 17 years, Mr. Akin violated USPAP Standard 2 and SR 2-2(b)(viii).

C. Count III – 2600 - 2602 Face Rock Court Report

In preparing and reporting the 2600-2602 Face Rock Court Appraisal Report, Mr. Akin violated USPAP Standard 1; USPAP SR 1-1(a)—(c), 1-4(b)—(c), 2-1(a)—(b) USPAP Standard 2; USPAP SR 2-1(b); and USPAP Ethics Rule--Conduct. Specifically:

- USPAP Standard 1

Mr. Akin's preparation and reporting of the 2600-2602 Face Rock Court Appraisal Report violated USPAP Standard 1, regarding the development of appraisals, because he did not "identify the problem to be solved, determine the scope of work necessary to solve the problem, and correctly complete research and analyses necessary to produce a credible appraisal."

The multiple careless and negligent errors Mr. Akin made in 2600-2602 Face Rock Court Appraisal Report, such as failing to correctly develop a highest and best use for the subject property; offer support for the site value of the subject property; offer support for forecasted rents with rental comparisons; correctly list whether the tenant or landlord paid utilities; offer any support for the final market value opinion of the subject property; correctly state the zoning classification; correctly analyze comparable rental data or the potential earnings capacity of the property; provide support for the estimated rent; and support the gross rent multiplier he used in

the analysis, result in the failure to correctly complete the research and analysis necessary to produce a credible appraisal.

Mr. Akin's violation of USPAP Standard 1 in his preparation of 2600-2602 Face Rock Court Appraisal Report is more specifically demonstrated in the context of his various USPAP Standards Rules and Ethics Rule—Conduct violations, addressed in turn below.

- USPAP SR 1-1(a)

Under SR 1-1(a), Mr. Akin was required to be aware of, understand and correctly employ the recognized methods and techniques necessary to produce a credible appraisal. He did not.

Mr. Akin failed to accurately apply the Sales Comparison Approach when he misstated the zoning classification of the subject property; failed to show his reasoning and support for the subject property's final market value opinion of \$568,560 versus the Cost Approach value of \$421,153; failed to indicate whether the tenant or landlord paid utilities; incorrectly stated the zoning classification as "R-3" and "Multi-Family Residential" instead of the correct classification of "R-2" and "Two-Family Development"; and failed to ensure that the sales and listings totals were consistent throughout the report.

Additionally, Mr. Akin failed to use recognized methods and techniques in his application of the Income Approach, when he failed to correctly analyze the comparable rental data that was available and the potential earnings capacity of the property to estimate its gross income capacity; assigned a rent value of \$2,400 for the units in the report, when the unit data for the development averaged between \$1,700 and \$2,200; provided no explanation of adjustments; and failed to correctly apply the Income Approach when he offered no support for the Gross Rent Multiplier.

Mr. Akin violated USPAP Standard 1 and SR 1-1(a).

- USPAP SR 1-1(b)

Under SR 1-1(b), Mr. Akin was required not to commit substantial errors of omission and commission that significantly affected the report. But he committed such errors when he overestimated the rent value of the subject property at \$2,400, which significantly increased the value of the property; failed to provide his reasoning or support for a final market value of \$568,560 under the Sales Comparison Approach section, despite having a Cost Approach value of \$421,153; and when he failed to provide support for the Gross Rent Multiplier.

Mr. Akin violated USPAP Standard 1 and SR 1-1(b).

- USPAP SR 1-1(c)

Mr. Akin rendered appraisal services in a negligent and careless manner under SR 1-1(c) by making several errors and misrepresentations in the 2600-2602 Face Rock Court Appraisal Report, some of which might not alone seem to affect value, but the sheer number of which affected the credibility of the report. For example, Mr. Akin stated the zoning classification for the subject property as R-3, multi-family residence, when it was zoned R-2, two-family residence, information that is public and easily accessible. He additionally failed to correctly apply the comparable rental data, resulting in an inflated and non-credible estimated rent value and unsupported forecasted rents. He also failed to offer support for the site value or to correctly identify who, landlord or tenant, paid the utilities.

Mr. Akin violated USPAP Standard 1 and SR 1-1(c).

- USPAP SR 1-4(a), (b) and (c)

Under USPAP SR 1-4(a), Mr. Akin was required to analyze such comparable sales data as were available to indicate a value conclusion. His failure to show any support for his analysis of the final market value within the Sales Comparison Approach of \$568,560 when his Cost

Approach value was \$421,153, is a violation of SR 1-4(a).

Under USPAP SR 1-4(b), Mr. Akin was required to develop an opinion of a site value when the Cost Approach was applied. He failed to show any support for his site value opinion for the subject property, in violation of USPAP 1-4(b).

Under USPAP SR 1-4(c), Mr. Akin was required to analyze comparable rental data and the potential earnings capacity of the subject property to estimate the gross income potential of the property. He failed to do so correctly, resulting in a non-credible estimated rent of \$2,400, in violation of USPAP 1-4(c).

Mr. Akin violated USPAP Standard 1 and SR 1-4(a), (b) and (c).

- USPAP Standard 2

Mr. Akin's preparation of the 2600-2602 Face Rock Court Appraisal Report violated USPAP Standard 2, regarding the reporting of the results of an appraisal, when he failed to communicate his "analysis, opinion, and conclusion in a manner that [was] not misleading." He violated it when he failed to include sufficient information in it, resulting in a misleading report.

Mr. Akin's violation of USPAP Standard 2 in his preparation of the 2600-2602 Face Rock Court Appraisal Report is more specifically demonstrated in the context of his USPAP Standard Rule violation, addressed below.

- USPAP SR 2-1(b)

Under USPAP SR 2-1(b), Mr. Akin had an obligation to provide sufficient information in the report, to allow intended users of the report to understand it. Based on the errors addressed above in connection with USPAP Standard 1 and the associated Standards Rules, Mr. Akin failed to include sufficient information to make the 2600-2602 Face Rock Court Report understandable to its intended users.

Mr. Akin violated USPAP Standard 2 and SR 2-1(b).

- Ethics Rule—Conduct

Mr. Akin prepared and reported the 2600-2602 Face Rock Court Report in a misleading manner, in violation of the USPAP Ethics Rule regarding Conduct, but not fraudulently.

As noted above in connection with the 5805 Vero Way Appraisal Report, to “mislead” means to “lead in a wrong direction or into a mistaken action or belief[,]” WEBSTER’S THIRD NEW INT’L DICTIONARY at 1444, and does not necessarily include a bad intent, *id.* at 584 (explaining differences between “deceive” and “mislead,” notwithstanding that the two words are synonyms). To deceive is to “cheat” or “defraud,” or “to cause to believe the false,” as in, to “delude.” *Id.* at 584.

Mr. Akin communicated the results of the report in a misleading manner because the report lacked discussion and analysis, and contained multiple errors, from the miscalculation of rental value, failed to support site value, failed to support the Sales Comparison Approach’s final market value, and failed to support the Gross Rent Multiplier Index.

The MREAC did not prove by a preponderance of the evidence that Mr. Akin had bad intent in preparing the 2600-2602 Face Rock Court Report. We therefore conclude that Mr. Akin did not prepare or communicate the report with fraudulent intent.

Mr. Akin violated the Ethics Rule—Conduct, in that he prepared and communicated it in a misleading manner, but he did not violate the prohibition against fraud.

In view of the foregoing, cause for discipline exists under § 339.532.2(6), (7), and (10).

### **Summary**

Cause for discipline of Mr. Akin's residential real estate appraiser license exists under § 339.532.2(5), (6), (7), (8), (10) and (14), as more specifically set forth above.

SO ORDERED on January 13, 2014.

\s\ Alana M. Barragán-Scott  
ALANA M. BARRAGÁN-SCOTT  
Commissioner